REMARKS

I. *Introduction.*

Claims 1-15 and 17-20 are pending and stand rejected. Claim 16 has been cancelled. Claim 1 has been ameded to clarify the language. Claim 20 has been amended to change its dependency to claim 1.

II. *The Rejection under 35 U.S.C. § 112, second paragraph*

Claim 1 has been rejected under 35 U.S.C. § 112, second paragraph as being indefinite. In response Applicants have amended claim 1 to clarify that line 11 refers to the first filter element and that the second air filter member functions to remove malodors from the air without the assistance of the air moving member. Applicants respectfully submit that the claim language is definite and request that the rejection be withdrawn.

III. *The Double Patenting Rejection under 35 U.S.C. § 101*

Claim 16 has been rejected under 35 U.S.C. § 101 as claiming the same invention as claims 1 and 4 of copoending application 09/972,098. Claim 16 has been cancelled. Therefore, Applicants respectfully submit that the rejection is moot.

IV. *The Rejection under 35 U.S.C. § 102(e) of claim 16*

Claim 16 has been rejected under 35 U.S.C. § 102(e) over copoending application 09/972,098. Claim 16 has been cancelled. Therefore, Applicants respectfully submit that the rejection is moot.

V. *The Obviousness-type Double Patenting Rejection of Claim 1*

Claim 1 has been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

VI. *The Obviousness-type Double Patenting Rejection of claims 2-4, 8 and 17*

Claims 2-4, 8 and 17 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098 in view of Randolph and Aibe et al. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

VII. *The Obviousness-type Double Patenting Rejection of claim 1*

Claim 1 has been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

VIII. *The Obviousness-type Double Patenting Rejection of claims 2-4, 8 and 17*

Claims 2-4, 8 and 17 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098 in view of Randolph and Aibe et al. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

IX. *The Obviousness-type Double Patenting Rejection of claims 5-7*

Claims 5-7 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098 in view of Randolph and Bermas. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

X. *The Obviousness-type Double Patenting Rejection of claims 18-19*

Claims 18-19 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098 in view of Randolph, Aibe et al. and Ganz. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

XI. *The Obviousness-type Double Patenting Rejection of claims 11 and 14*

Claims 11 and 14 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098 in view of Randolph. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

XII. *The Obviousness-type Double Patenting Rejection of claims 12-13 and 15*

Claims 12-13 and 15 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098 in view of Randolph and Aibe et al. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

XIII. *The Obviousness-type Double Patenting Rejection of claim 20*

Claim 20 has been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copoending application 09/972,098 in view of Ganz. Applicants submit herewith a Terminal Disclaimer over 09/972,098. Therefore, Applicants contend that the rejection is obviated and should be withdrawn.

XIV. *The Rejection under 35 U.S.C. § 103(a) over Aibe in view of Bermans and Aibe*

Claims 1-8 and 11-17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,403,548 to Aibe et al. (hereinafter "Aibe '548") in view of U.S. Patent 5,772,595 to Bermas (hereinafter "Bermas") and further in view of U.S. Patent 5,288,306 to Aibe et al. (hereinafter "Aibe '306"). Applicants respectfully traverse this rejection. The references do not establish a *prima facie* case of obviousness since they do not teach or suggest all of Applicants' claim limitations (see MPEP 2143.03). Specifically, the combined references do not teach or suggest a device combining two kinds of air filtering methods (a first air filter associated with an air moving member and a second air filter that uses passive means).

None of the references, alone or in combination, teach or suggest combining an active air filter with a passive air filter. Some references, like Aibe '548, disclose an active filter while others, like Bermas, disclose a passive filter. None of the references suggest that it would be desirable or advantageous to combine an active filter with a passive filter. Applicants submit that the rejection instead uses impermissible hindsight to construct an obviousness argument.

On page 18 of the Office Action, it is stated that "The ('959) discloses (col.1, lines 49-55) that combinations of various odor controllers including activated carbon and sodium bicarbonate are known to be used together to treat air within refrigerators. As a result, it would have been obvious for a person of ordinary skill in the art of deodorizing air in the refrigerators to utilize the teachings of Bermas and Aibe et al in order to maximize the rate of deodorization of air inside refrigerators by combining a passive deodorizer and an active deodorizer." Applicants submit that the disclosure by Bermas does not suggest Applicants' claimed device. Simply disclosing that odor controlling compositions can be used in combination does not suggest a device having an active filter and a passive filter. The Bermas disclosure seems to suggest combining two odor controllers in one filter. Bermas does not suggest two filters. Certainly, Bermas does not suggest two different kinds of filters.

Further, the position that it "would have been obvious to a person of ordinary skill in the art of deodorizing air in refrigerators to utilize the teachings of Bermas and Aibe et al in order to maximize the rate of deodorization of air inside refrigerators by combining a passive deodorizer and an active deodorizer" is incorrect. First, there is no teaching or suggestion in the references that there is a need to "maximize the rate of deodorization." Bermas and Aibe teach that their devices are effective at removing odors. Applicants contend that the Office Action created an issue for the hypothetical "person skilled in the art" that was not suggested by the references. Secondly, if one wanted to increase the deodorization of Bermas or Aibe, they would have many choices – bigger filters, stronger fans, more potent odor controlling compositions, etc. Multiple filters is not necessarily a logical or obvious choice when seeking to increase the rate of deodorization. Finally, if multiple filters were a chosen method, one skilled in the art would increase the same device that has been taught to be effective. In Bermas, multiple passive filters could be used. In Aibe, multiple active filters.

Applicants contend that the claimed invention is not obvious. There is no motivation given for one skilled in the art to pursue a higher rate of deodorization. There is no suggestion in Bermas to use multiple filters. Further, multiple filters are not an obvious design modification. Finally, using multiple filters that use different filter mechanisms (active and passive) is completely removed from the teachings of the references. Since the only way to construct an obviousness rejection based on the cited art is to use hindsight, Applicants contend that the rejection is improper.

None of the references, alone or in combination, teach or suggest a device combining two kinds of air filtering methods (a first air filter associated with an air moving member and a

second air filter that uses passive means). Therefore, a *prima facie* case of obviousness has not been established. As a result, Applicants contend that their claimed device is novel and unobvious and that the rejection under 35 U.S.C. 103(a) should be withdrawn.

XV. *The Rejection under 35 U.S.C. § 103(a) over Aibe in view of Bermans, Aibe and Ganz*

Claims 18-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Aibe '548 in view of Bermas and further in view of Aibe '306 and U.S. Patent 2,025,657 to Ganz (hereinafter "Ganz"). Applicants respectfully traverse this rejection. The references do not establish a *prima facie* case of obviousness since they do not teach or suggest all of Applicants' claim limitations (see MPEP 2143.03). Specifically, the combined references do not teach or suggest a device combining two kinds of air filtering methods (a first air filter associated with an air moving member and a second air filter that uses passive means).

As described in detail above, none of the references, alone or in combination, teach or suggest a device combining two kinds of air filtering methods (a first air filter associated with an air moving member and a second air filter that uses passive means). Therefore, a *prima facie* case of obviousness has not been established. As a result, Applicants contend that their claimed device is novel and unobvious and that the rejection under 35 U.S.C. 103(a) should be withdrawn.

XVI. *Summary*.

In view of the foregoing, reconsideration of the application and allowance of all pending claims are respectfully requested.

Respectfully submitted,
PAUL STIROS, ET AL.

By _____
Brent M. Peebles
Attorney for Applicant(s)
Registration No. 38,576
(513) 627-6773

November 18, 2004
Customer No. 27752
8412 Amendment 11-2004.doc